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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,688	06/07/2001	Terry K. Harper	10872-1010	8203

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EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/876,688

Applicant(s)

HARPER, TERRY K.

Examiner

Naschica S Morrison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-9,11-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-9,11-18 and 20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is the fifth Office Action for serial number 09/876,688, Removable Wire Caddy for Electrician's Ladder, filed on June 7, 2001. Claims 1-5, 7-9, 11-18, and 20-22 are pending.

Claim Objections

Claim 1 is objected to because of the following informalities: on line 15, "and projecting" should be --so as to project--. Appropriate correction is required.

Claim 7 is objected to because of the following informalities: on line 3, --are adapted to-- should be inserted before "register". Appropriate correction is required.

Claim 8 is objected to because of the following informalities: on line 4, "arms maintains" should be --arms is adapted to maintain--. Appropriate correction is required.

Claim 15 is objected to because of the following informalities: on line 8, "of the of a" should be --and of a--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5, 7, 8, 15-18 and 20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-5, 7, 8, 15-18 and 20-22 are rejected because it is unclear whether the combination of the support attachment and ladder is being claimed or merely the subcombination of the support attachment. Claims 1 and 15 recite the ladder in a functional statement in the preambles of the respective claims, indicating the subcombination is being claimed, yet the applicant recites further structural limitations of the support attachment relative to the structure of the ladder in claim 1 (lines 8-9, 11-12, and 16) and claim 15 (lines 8-9 and 21), indicating the combination is being claimed. Also, please see all depending claims for similar problems. For purposes of this Office action, the examiner has rejected claims 1-5, 7, 8, 15-18 and 20-22 as if *only* the **subcombination** of the support attachment is being claimed.

Claim 4 recites the limitation "said step engaging means" in lines 3 and 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "said step engaging means" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7, 8, 15-18, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,705,283 to Kleisath in view of U.S. Patent 1,341,484 to Starratt. With regards to claims 1-5, 7, 8, 15-18 and 20-22, Kleisath discloses a support attachment comprising: a handle/spacer (8) comprising an arm (at 8) and a side rail

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engaging means comprising a rectilinear support bar (11) having opposed ends and rigidly connected to the arm (at 8); a U-shaped frame (4) extending forwardly from, parallel to, and rigidly connected to the support bar (11) for rotatably supporting wire spools (29), the frame comprising parallel spaced side legs (6) having openings and extending from end portions of a base leg (7) that is joined to the support bar (at 8), and a rectilinear, horizontally-oriented spool support rod (28) having opposed ends releasably mounted within the openings of the U-shaped frame side legs (6); wherein the support bar (at 8), side rail engaging means (11), and U-shaped frame (4) are of one-piece construction, occupy a common plane and define oppositely facing C-shaped recesses. Kleisath does not disclose the handle/spacer including two parallel, spaced apart arms (at 8). Starratt discloses a support attachment (Fig. 1) comprising a handle including a rectilinear support bar (2) rigidly connected to a pair of parallel, spaced apart arms (1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the handle of Kleisath to include an additional arm parallel to and spaced from the arm (at 8) as taught by Starratt because one would have been motivated to provide a stronger interconnection between the rectilinear handle bar (7) and U-shaped frame (4).

Claims 9 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,533,091 to Knight et al. (Knight) in view of Kleisath in view of Starratt as applied to claims 1-5, 7, 8, and 15-22 above and further in view of U.S. Patent 4,869,344 to Peterson. With regards to claims 9 and 11-14, Knight teaches positioning a wire caddy (13, 14 generally) on the side rails of a ladder (11) and horizontally

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orienting a spool support rod (13) having wire spools thereon above a step (cylindrical rod located between 10, 10). Knight does not teach suspending the spool support rod between distal ends of parallel legs of a U-shaped frame or configuring the wire caddy to include a support bar, pair of spacer bars, and base leg to form oppositely facing C-shaped recesses so as to register about the side rails of the ladder (11), wherein the base leg rests on a step located between the side rails. Kleisath in view of Starratt discloses the support attachment as applied above and inherently teaches structure adapted to perform the method steps recited in claims 9, 11, 12 and 14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the support attachment of Kleisath in view of Starratt for the wire caddy (13, 14 generally) of Knight for attachment between the side rails and on the step because one would have been motivated to provide a portable wire caddy that is quickly and easily installed as inherently taught by Kleisath in view of Starratt. Additionally, Knight in view of Kleisath in view of Starratt does not teach securing the spool support rod (28) to the ends of the parallel legs (6) by positioning locking pins in opposing ends of the spool support rod (28). Peterson teaches securing a spool support rod (46) to parallel legs (42, 44) by positioning locking pins (52, 54) in opposing ends of the support rod (46). It would have been obvious to one of ordinary skill in the art at the time the invention was made to position locking pins in opposing ends of the spool support rod of Kleisath because one would have been motivated to fix the ends of the spool support rod against passage through the parallel arms (6) as taught by Peterson (col. 3, lines 29-33).

Response to Arguments

Applicant's arguments filed 8/15/03 have been fully considered but they are not persuasive. In response to applicant's argument that "Starrat does not teach balancing its handle on a surface" and "Starratt does not provide motivation to modify Kleisath so as to perform the function of balancing the handle...", the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Additionally, regarding applicant's argument that Kleisath and Starratt do not suggest the limitations of claim 1 (and its dependents) regarding the breadth of the spacer and the specific relationship (i.e. length, etc.) between the side rail engaging means and side rails of the ladder, etc., claims 1-5, 7, 8, and 15-22 do not positively recite a ladder in combination with the support attachment.

In response to applicant's argument that Kleisath's handle would not support the device extending out from a ladder, examiner respectfully disagrees. While Kleisath teaches the use of the peg 15 to support the frame and load (19) when in the position shown in Figure 3, it would not be feasible for one to speculate that the handle would not support the device when lying on a step of a ladder. Specifically, it is apparent from Fig. 3 that the weight of the frame and load (19) would only be carried by 2 points of contact between the frame and ground (13, 11) if the peg (15) is omitted. It is understood that the joint between the handle 8 and frame 7 is the weakest segment of the frame positioned between the points of contact (13, 11), which would create the

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buckling effect. If the device of Kleisath were rested upon the step of a ladder, the load-bearing contact between the frame and step would be along the length of the handle 8 (i.e. line contact not point contact) and thus would not cause buckling of the handle at the joint between the frame and handle. Additionally, in response to applicant's arguments against Kleisath individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

Regarding applicant's argument that Kleisath is designed to support a very heavy spool and the handle 8 is not likely to be strong enough to support the weight of the spools and wire, while Kleisath does teach the holder supporting heavy spools as recited by applicant, Kleisath additionally teaches supporting smaller spools of wire (29) and is therefor fully capable of supporting wire spools if mounted on a ladder.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, examiner respectfully disagrees. The combination of Kleisath and Starrett was not created to provide a device which can hang by its handle from a ladder. The combination teaches a load-carrying device having a stronger handle as suggested by the prior art. The intended use of the device was not the basis or motivation for the combination.

CONCLUSION

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6688550 to Mullins discloses a portable supply rack.

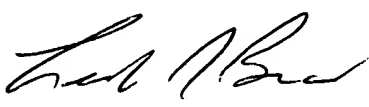
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 872-9325.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
2/27/04


LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER